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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE PRESTON WILLIAMS

Appeal 2008-1404
Application 10/604,304
Technology Center 3600

Decided: July 24, 2008

Before WILLIAM F. PATE, III, ANTON W. FETTING, and
JOHN C. KERINS, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*

DECISION ON APPEAL

STATEMENT OF THE CASE

Bruce Preston Williams (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-8, 11, and 12, the only claims pending in the application. Claims 9 and 10 are canceled and claims 13-17

Appeal 2008-1404
Application 10/604,304

have been withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

Appellants' invention is a motor vehicle configuration having a trailer hitch attached to a rear structural member, the rear structural member having a pair of spaced-apart brackets also attached thereto, a rear bumper covering the structural member while also allowing access to the brackets, and a step pivotally coupled to the brackets. The brackets and step are attached to the structural member such that the trailer hitch will be operational when the step is in either of a first or second position (e.g., deployed for use and stowed).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A motor vehicle comprising:
 - a body having a front end, a rear end and a roof;
 - a plurality of wheels coupled to said body;
 - a rear structural member located at said rear end of said body;

Appeal 2008-1404
Application 10/604,304

a trailer hitch attached to said structural member;
a pair of brackets attached to said structural member and spaced a predetermined distance apart;
a rear bumper configured to both cover said structural member and to allow for access to said brackets; and
a step pivotally coupled to said brackets and operative to articulate about an axis between first and second positions, with said brackets being attached to said structural member such that said trailer hitch is operational when said step is in either of said first or second positions.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Hehr	US 6,685,204 B1	Feb. 3, 2004
Blake	US 6,874,806 B1	Apr. 5, 2005

The following rejections are before us for review:

1. Claims 1-8 and 11 stand rejected under 35 U.S.C. § 103(a) as being obvious over Blake.
2. Claim 12 stands rejected under 35 U.S.C. § 103(a) as being obvious over Blake in view of Hehr.

ISSUES

A first issue before us is whether Appellant has shown that the Examiner erred in concluding that the Blake patent renders obvious the subject matter of claims 1-8 and 11. A second issue before us is whether Appellant has shown that the Examiner erred in concluding that the Blake and Hehr patents render obvious the subject matter of claim 12. Both issues involve whether it would have been obvious to a person of ordinary skill in the art to modify the vehicle step/hitch cover plate disclosed in Blake to allow the trailer hitch to be operable when the hitch cover plate is both open and closed.

FINDINGS OF FACT

The following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

FF 1. The Blake patent discloses a trailer hitch cover assembly that is capable of providing a secure footing area or step for an operator to use, when the cover assembly is in an open position. (Blake, Col. 2, ll. 45-49).

FF 2. The Blake patent discloses one alternative embodiment of a cover assembly, illustrated in Figures 7A and 7B, that does not have

Appeal 2008-1404
Application 10/604,304

sufficient structural foundation for the cover to serve as a step. (Blake, Col. 9, ll. 12-16).

FF 3. The trailer hitch cover assembly in Blake is pivotable between an open position and a closed position. (Blake, Col. 2, ll. 24-30). In the open position, the cover assembly pivots away from an aperture to expose the hitch tube, and to provide the secure footing area or step. (Blake, Col. 2, ll. 29-30 and ll. 48-49). In the closed position, the cover assembly conceals the hitch tube and prevents access to the hitch tube. (Blake, Col. 2, ll. 28-29 and l. 35).

FF 4. Figure 5B of the Blake patent illustrates an embodiment of the trailer hitch cover assembly which includes a pivotable cover plate 156 with a fascia plate 188 secured thereto, as by welding, such that the cover plate 156 is not pivotable independently of the fascia plate. (Blake, Fig. 5B; Col. 7, ll. 36-40).

FF 5. The Blake patent nowhere describes or illustrates the provision of a window that permits access to the trailer hitch when the cover assembly is both open and closed.

PRINCIPLES OF LAW

Section 103 precludes issuance of a patent when, “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

Appeal 2008-1404
Application 10/604,304

subject matter pertains.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (*Graham* factors continue to define the inquiry that controls).

ANALYSIS

Obviousness rejection of claims 1-8 and 11

Appellant argues claims 1-8 and 11 as a single group. We will designate herein claim 1 as being representative of this group of claims.

Appellant argues that the Blake patent is “devoid of any teaching or suggestion that his cover plate could be used as a step.” (Appeal Br. 4). Appellant also urges that Blake neither teaches nor suggests anything regarding a step which is pivotably coupled so as to allow the step to be articulated about an axis between first and second positions so that a trailer hitch may be operational when the step is in either of the first or second positions. (Appeal Br. 5).

Appellant’s first argument is without merit. Blake specifically discloses, as an advantage of the invention therein, that “the trailer hitch cover assembly provides a weather-tight, lockable access cover when in a closed position, and provides a secure footing area *as a step for operator*

Appeal 2008-1404
Application 10/604,304

access to the motor vehicle when opened.” (FF 1; Blake, Col. 2, ll. 45-49 (emphasis added)).¹

We agree with Appellant, however, that Blake does not render obvious the provision of a step that is pivotably coupled so that a trailer hitch is operational with the step in either its first or second position. Blake discloses a trailer hitch cover assembly having an open and a closed position. (FF 3). In its open position, the trailer hitch is operational, and the cover assembly provides a secure footing area as a step. *Id.* In its other position, a closed position, the cover assembly is said to, “conceal[s] the hitch tube”, and to “prevent access to the hitch tube”. (*Id.*, Blake, Col. 2, ll. 28-29 and l. 35).

The Examiner relies principally on the trailer hitch cover assembly shown in the Fig. 8 embodiment in Blake. (Answer 6). The Examiner goes so far as to acknowledge that this embodiment does not allow access to the trailer hitch when the cover assembly is closed, thus not allowing the trailer hitch to be operational. *Id.* The Examiner then turns to Figure 5B (and Figure 6, which is of substantially the same construction), stating that,

...Blake in Figure 5B, discloses a cover (186) having a window, which is covered by a door (156). The trailer hitch can be access if the cover (186) in a close position and door remain in an

¹ Blake refers to one embodiment, namely that of Figures 7A and 7B, as having an insufficient structural foundation to provide a step, unlike the other embodiments disclosed. (FF 2). The rejection of claim 1 is not, however, founded on the embodiment in Figures 7A and 7B.

Appeal 2008-1404
Application 10/604,304

open position. Figure 5B of Blake teaches the concept to have the window for permitting passage of the trailer hitch when the cover is both open or close.

(Answer 7).

This is an erroneous interpretation of the Blake disclosure. Blake describes, with respect to the Fig. 5B embodiment, that “the cover assembly 186 includes a rotatable door or cover plate 156 and a fascia plate 188. . . .

The fascia plate 188 includes a raised portion 190 that is secured to the cover plate 156 by suitable means such as welding.” (Blake, Col. 7, ll. 13-18).

Contrary to the above-quoted assertion by the Examiner, the securement of the fascia plate to the cover plate as described by Blake precludes the cover 186 being in a closed position and the door 156 remaining in an open position. (FF 4). Blake further nowhere teaches or suggests the concept of having a window for permitting passage of the trailer hitch when the cover is both open and closed. (FF 5).

We will reverse the rejection of claims 1-8 and 11 under 35 U.S.C. § 103(a) in view of Blake.

Obviousness rejection of Claim 12

Claim 12 is rejected under 35 U.S.C. § 103(a) over the Blake patent in view of the Hehr patent. Claim 12 depends from claim 11, which in turn depends from claim 1. Claim 12 includes claim elements directed to a particular construction of a claimed lockout mechanism for the trailer hitch cover assembly. (Appeal Br., Claims Appendix).

Appeal 2008-1404
Application 10/604,304

Appellant contends that the Hehr patent lacks any teaching of a locking pin in relation to a folding step, and that claim 12 ultimately depends from claim 1, which was argued to be allowable in its own right. (Appeal Br. 5). The Examiner relies on the Hehr patent as disclosing aspects of a locking pin mechanism, but does not cite to the teachings of Hehr as disclosing a pivotable step that is configured to allow a trailer hitch to be operational when the step is in either of a first or second position. (Answer 5-6).

The Hehr patent fails to make up for the shortcomings of the Blake disclosure identified in the preceding section, in terms of establishing a *prima facie* case of obviousness with respect to the claims. The combination of the teachings of Blake and Hehr thus does not support the rejection of claim 12 on obviousness grounds.

We will reverse the rejection of claim 12 under 35 U.S.C. § 103(a).

CONCLUSION

We conclude that reversible error exists in the rejection of claims 1-8, 11, and 12 under 35 U.S.C. § 103(a).

DECISION

The decision of the Examiner to reject claims 1-8, 11, and 12 is reversed.

REVERSED

Appeal 2008-1404
Application 10/604,304

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